Supreme Court, U.S.
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No. ____

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1994

JASON TODD AND JOSEPH HUGH HUTCHINSON, *Petitioners*,

v.

STATE OF FLORIDA, *Respondent*.

On Petition for a Writ of Certiorari to the
Florida First District Court of Appeal

PETITION FOR A WRIT OF CERTIORARI

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25 pp

QUESTIONS PRESENTED

Subsection 2 of the Florida Criminal Mischief Statute provides that an act of criminal mischief causing between $200 and $1000 damage is a felony if committed against a "church, synagogue, mosque, or other place of worship, or any religious article contained therein." The same act is a misdemeanor if committed against secular property—the one exception being public telephone property. The trial judge found the petitioners guilty of violating Subsection 2. Under the Fourteenth Amendment, the questions presented are:

1. Does Subsection 2 violate the Establishment Clause by benefitting religious institutions without similarly benefitting a broad class of secular institutions?

2. Does Subsection 2 violate the Equal Protection Clause by punishing offenses against religious property more severely than identical offenses against secular property?

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In The
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JASON TODD AND JOSEPH HUGH HUTCHINSON, *Petitioners*,

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Petition for a Writ of Certiorari to the Florida First District Court of Appeal

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Jason Todd and Joseph Hugh Hutchinson respectfully petition for a writ of certiorari to review the judgment of the Florida First District Court of Appeal in this case.

OPINIONS BELOW

The opinion of the Florida First District Court of Appeal (App., *infra*, 1a-11a) is reported at 643 So.2d 625 (Fla.Dist.Ct.App. 1994). The opinion of the state circuit court (App., *infra*, 12a-13a) is unreported.

JURISDICTION

The Florida Supreme Court denied Jason Todd's petition for discretionary review on January 18, 1995 (App., *infra*, 67a-68a), and denied Joseph Hugh Hutchinson's petition on February 10, 1995 (App., *infra*, 69a-70a). The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the Constitution provides, in relevant part, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Section 1 of the Fourteenth Amendment provides, in relevant part, that "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States * * * nor deny to any person within its jurisdiction the equal protection of the laws."

Subsection 1 (a) of the Florida Criminal Mischief Statute, Fla.Stat. § 806.13 (1991), provides, in relevant part, that "[a] person commits the offense of criminal mischief if he willfully and maliciously injures or damages * * * any real or personal property belonging to another * * *." Under Subsection 1 (b)2, "[i]f the damage * * * is greater than $200 but less than $1000, it is a misdemeanor * * *."

Under Subsection 2, "[a]ny person who willfully and maliciously defaces, injures, or damages * * * any church, synagogue, mosque, or other place of worship, or any religious article contained therein is guilty of a felony of the third degree * * * if the damage to the property is greater than $200."

Under Subsection 3, any person who "willfully destroys or substantially damages any public telephone [property] * * * which destruction or damage renders a public telephone inoperative or which opens the body of a public telephone shall be guilty of a felony of the third degree * * * [if] conspicuous notice of * * * this subsection * * * shall have been posted * * *."

STATEMENT

The petitioners, Jason Todd and Joseph Hugh Hutchinson, were arrested in Columbia County, Florida in May 1992 and charged with three counts of criminal mischief under Subsection 2 of the Florida Criminal Mischief Statute. They were accused of spray-

painting three churches with anti-religious symbols and words, and causing between $200 and $1000 damage upon each church. In the Third Judicial Circuit Court of Florida, Todd and Hutchinson filed motions to dismiss. They argued, under the Fourteenth Amendment, that Subsection 2 violated the Establishment Clause and the Equal Protection Clause. Upon denial of their motions (App., *infra*, 12a-13a), they pled no contest, stipulated to a factual basis for the plea, and reserved their right to appeal. *Id.* at 3a. They were convicted and sentenced to serve 48 hours in jail, 150 hours of community service, and 15 years of probation. *Id.* at 3a, 16a-31a.

On consolidated appeals to the Florida First District Court of Appeal, they raised the same constitutional challenges. The district court of appeal affirmed. They filed separate[1] petitions for discretionary review in the Florida Supreme Court arguing that the district court of appeal's decision had directly passed upon the state and federal constitutionality of a state statute.[2] The court denied Todd's petition in a 5-0 order (App., *infra*, 67a-68a), and denied Hutchinson's petition in a 5-2 order (*id.* at 69a-70a).[3]

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[1]Todd had raised an unsuccessful sentencing challenge in the district court of appeal. On the basis of intra-district conflict, he filed a motion for rehearing en banc, which was denied. App., *infra*, 71a.

[2]Under article V, section 3(b)(3), of the Florida Constitution, state supreme court review of decisions "that expressly declare[] valid a state statute, or that expressly construe[] a provision of the state or federal constitution" is discretionary. Accordingly, petitions for discretionary review do not directly raise constitutional challenges, but attempt to show the state supreme court it has discretionary jurisdiction it should exercise.

[3]Under the internal operating procedures of the Florida Supreme Court, a panel of five of the court's seven justices receive copies of petitions

A. The Florida Criminal Mischief Statute

This case involves the constitutionality of Subsection 2 of the Florida Criminal Mischief Statute in light of *Lemon v. Kurtzman*, 403 U.S. 602 (1971), and *Texas Monthly v. Bullock*, 489 U.S. 1 (1989).

With the exception of religious property and public telephone property, if a person "willfully and maliciously injures or damages" the property of another, and causes between $200 and $1000 damage, the offense is a misdemeanor under the Criminal Mischief Statute. Under Subsection 2, if a person "willfully and maliciously defaces, injures, or damages * * * any church, synagogue, mosque, or other place of worship, or any religious article contained therein," and causes over $200 in damage, the offense is a felony. Where damage is over $200, but less than $1000, the difference between a criminal mischief felony under Subsection 2, and a criminal mischief misdemeanor under Subsection 1, is the religious nature of the property. A legislative staff summary concerning the addition of Subsection 2, provides: "It is believed that legislation of this type is necessary to curtail the increasing number of criminal mischief acts committed in a place [sic] of worship and in cemeteries." App., *infra*, 75a. The Criminal Mischief Statute does not provide heightened protection for secular cemeteries.

Subsection 3 provides the other exception to the Criminal Mischief Statute's general provisions: If a person "willfully destroys or substantially damages any public telephone" property and consequently "renders a public telephone inoperative or * * * opens the body of a public telephone" the offense is a felony. This

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filed for discretionary review. Florida Supreme Court Manual of Internal Operating Procedures, §II A.1(a). If four members of the court agree, an order is entered either requesting briefs on the merits or denying review. *Id.* If, however, less than four members agree, "the case circulates to the two members of the Court not originally assigned to the panel." *Id.*

exception only applies, however, if "conspicuous notice" of the subsection has been posted.

This case presents two questions: First, whether the Criminal Mischief Statute, by providing additional protection to only religious property and public telephone property, violates the "broad class" requirement the Court has discussed in its Establishment Clause cases. Second, whether the Criminal Mischief Statute violates the Equal Protection Clause by punishing offenses against religious property more severely than offenses against secular property.

B. Proceedings Below

Todd and Hutchinson filed motions to dismiss in the trial court arguing Subsection 2 of the Criminal Mischief Statute violated the Equal Protection and Establishment Clauses under the Fourteenth Amendment.[4] In its order denying their motion, the state trial court followed the three prong test this Court announced in *Lemon v. Kurtzman*, *supra*: Governmental action must (1) have a valid secular purpose; (2) have an effect that neither advances nor inhibits religion; and (3) not foster excessive entanglement with religion. App., *infra*, 12a-13a.

The trial court concluded Subsection 2 had a valid secular purpose, and that there was no evidence it was wholly motivated by religious considerations. App., *infra*, 12a. Without citation to the record, the court found "places of worship [were] uniquely vulnerable" because "they [were] often vacant especially at night when acts of criminal mischief typically occur[ed]." *Id.* at 12a-13a.

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[4]In *Lee v. Weisman*, 112 S.Ct. 2649 (1992), the Court noted that it had "unanimously incorporated the Establishment Clause into the Due Process Clause of the Fourteenth Amendment and, by doing so, extended its reach to the actions of the States" in *Everson v. Board of Education*, 330 U.S. 1, 14-15 (1947). *Lee*, 112 S.Ct at 2673 n.4. "Since then, not one Member of th[e] Court has proposed disincorporating the Clause." *Id.*

Under the second *Lemon* prong, the court found Subsection 2 did not advance religion because it was "only a penalty enhancing statute that applie[d] to what would otherwise be unlawful conduct under" the Criminal Mischief Statute. *Id.* at 13a.

Dispensing with the Equal Protection argument, the court found that the "State ha[d] a compelling interest in protecting places of worship and all individuals who unlawfully vandalize[d] places of worship [were] treated equally just as all places of worship [were] treated equally under the law." App., *infra*, 13a.

In their consolidated appeals to the Florida First District Court of Appeal, Todd and Hutchinson cited *Texas Monthly, Inc. v. Bullock*, *supra*, and argued Subsection 2 of the Criminal Mischief Statute was unconstitutional because it elevated deterrence of criminal mischief upon religious property—and thus primarily benefitted religious institutions—without similarly benefitting a broad secular class. App., *infra*, 8a-9a. They also raised the Equal Protection challenge they had presented in the trial court. *Id.* at 10a-11a.

Affirming, the district court of appeal held Subsection 2 passed the *Lemon* test. App., *infra*, 10a. Analyzing the first *Lemon* prong (secular purpose), the court cited the legislative staff summary indicating increased punishment was necessary to deter crimes against religious property. *Id.* at 7a. On this basis, the court found "the *legislature's articulated purpose* was to deter criminal mischief," and that it, thus, could not "be said that the statute lacks a secular purpose." *Ibid.* (emphasis added). The court found that Subsection 2's purpose was only indirectly to benefit religious organizations because it "merely increase[d]" the punishment for vandalizing religious property. *Id.* at 8a. The court also found Subsection 2 satisfied the broad class requirement because "an increased penalty" under the Criminal Mischief Statute "also applie[d] to criminal mischief involving telephone services." *Ibid.*

In its analysis of the second *Lemon* prong (secular effect), the district court of appeal found the Criminal Mischief Statute

"clearly show[ed] that its primary *purpose* [was] to punish those who deface[d] all sorts of property." App., *infra*, 9a. (emphasis added). The observation did not address Subsection 2, or explain how it had a secular primary effect. The court conceded that "there [was] some benefit to religious institutions since there [was] greater deterrence for criminal mischief involving religious property," but dismissed such a benefit as permissibly incidental under *Bullock*. *Ibid.* The court found the Criminal Mischief Statute satisfied *Bullock's* broad class requirement because "an enhanced penalty also applie[d] to criminal mischief involving telephone services." *Ibid.*

The court held Subsection 2 did not violate the Equal Protection Clause because the difference in punishment it provided for offenses against secular and religious property was rationally related to a legitimate state interest—deterring acts of criminal mischief. App., *infra*, 10a. The court cited the legislative staff summary to buttress its claim that Subsection 2's heightened deterrence for the benefit of religious institutions served a legitimate state end. *Ibid.* Addressing the rational relationship prong of the Equal Protection analysis, the court simply concluded: "The Statute's enhanced penalties for acts against [religious institutions] are rationally related to a legitimate state interest." *Id.* at 10a-11a. Thus, the court, which found Subsection 2's benefit to religious institutions too attenuated to raise concern in the context of an Establishment Clause analysis, simultaneously found Subsection 2 rationally related to providing such institutions additional protection in the context of an Equal Protection Clause analysis.

REASONS FOR GRANTING THE PETITION

The decision below is erroneous, and the issues it addresses are important. As the district court conceded in this case, Subsection 2 provides religious institutions a benefit it does not provide secular institutions. This Court has held that state actions benefitting

religious institutions are unconstitutional unless provided either to an adequately broad class that includes similar secular institutions, or as a means of reducing a governmental burden upon religion. Statutes seeking to address crimes interfering with the practice of religion are abundant. This case presents the opportunity for the Court to resolve whether such politically popular measures are constitutional when they single-out religious institutions for protection not provided to secular institutions.

I. The Decision of the District Court of Appeal Is Erroneous.

In *Lemon v. Kurtzman*, *supra*, the Court articulated a tripartite test for determining whether a statute violates the Establishment Clause. A statute must: 1) have a secular purpose; 2) have a primary "effect that neither advances nor inhibits religion;" and 3) not foster "'excessive governmental entanglement with religion.'" 403 U.S. at 612-613 (quoting *Waltz v. Tax Commission*, 397 U.S. 664, 674 (1970). In *Texas Monthly v. Bullock*, *supra*, the Court clarified *Lemon* by explaining that state action benefiting religion cannot pass the first two *Lemon* prongs unless that benefit is merely incidental to religion's inclusion within a broad class that includes similar secular institutions. *Bullock*, 489 U.S. at 15-16. The Court noted an exception to the broad class requirement where the questioned benefit reduced the government's burden upon religion. *Id.* at 18 n.8. Subsection 2 fails to meet *Bullock's* broad class requirement, and it does not alleviate governmental intrusion upon religion.

A. In *Bullock*, the Court found a sales tax exemption for literature violated the Establishment Clause because it was limited to religious literature. The Court distinguished its prior decisions, including *Waltz v. Tax Commission, supra*, where it had approved governmental action that recognized and benefitted religions: "In all of these cases, however, we emphasized that *the benefits derived by religious organizations flowed to a large number of nonreligious groups as well.*" *Bullock*, 489 U.S. at 11 (emphasis added). The

Court continued: If "those benefits [were] confined to religious organizations, they could not have appeared other than as state sponsorship of religion; if that were so, we would not have hesitated to strike them down for lacking a secular *purpose and effect*." *Id.* (emphasis added). The Court explained a law did not violate the Establishment Clause because its purpose or effect benefitted religion if that benefit was incidental to religion's inclusion in a broad class. "The *breadth* of New York's property tax exemption was essential to our holding [in *Waltz*] that it was not 'aimed at establishing * * * religion,' * * * but rather possessed the legitimate secular purpose and effect * * *." *Bullock*, 489 U.S. at 12 (emphasis added) (quoting *Waltz*, 397 U.S. at 674); *see also Widmar v. Vincent*, 454 U.S. 263, 274 (1981) ("[t]he provision of benefits to so broad a spectrum of groups is an important index of secular effect."); *Committee for Public Education v. Nyquist*, 413 U.S. 756, 794 (1973) (distinguishing *Waltz*, and finding narrowness of benefitted class important factor in assessing effect of legislation).

In *Waltz*, a property owner challenged a city tax exemption for religious institutions that was part of an exemption for various other organizations. 397 U.S. at 665 n. 1, 666. Upholding the exemption, the Court reasoned that the city had "granted exemptions to all houses of religious worship within a *broad class* of property owned by non-profit, quasi-public corporations which include hospitals, libraries, playgrounds, scientific, professional, historical, and patriotic groups." *Id.* at 672-673 (emphasis added). The Court did not base its determination upon the "'good works'" churches provide, *id.* at 673-674, but found the exemption was an accommodation that invited less entanglement than taxation. *Id.* at 673, 675. Since the exemption did not treat religious organizations with preference over other non-profit groups, the Court held it did not establish, sponsor, or support religion. *Id.* at 674.

With respect to the first prong of the *Lemon* test (secular purpose), the district court of appeal reasoned *Bullock* did not imperil Subsection 2 because deterring criminal mischief upon

religious property more severely than criminal mischief upon secular property did "not directly benefit religious organizations." App., *infra*, 8a. In its analysis of the second prong of the *Lemon* test (secular effect), the court conceded that Subsection 2 benefitted religious institutions, but claimed that benefit did not present a constitutional hurdle because it was "indirect" and, therefore, an acceptable "incidental[] benefit [to] religion" under *Bullock*. *Id.* at 9a. Both of these conclusions are circular and, thus, unresponsive to the broad class requirement the Court discussed in *Bullock*:

The term "incidental", as used in *Bullock*, refers to where "religious groups benefit incidentally" as part of their inclusion within a broad class. *Bullock*, 489 U.S. at 14-15. Whether a benefit such as protection from criminal mischief is incidental under *Bullock* thus hinges upon whether it is provided to an adequately broad class. *Id.; see also Widmar*, 454 U.S. at 274 (Court discussing term "'incidental' within the meaning of [its] cases," and holding public university should make forum available to religious speakers because forum would be "available to a broad class of nonreligious as well as religious speakers"); *cf. Zobrest v. Catalina Foothills School District*, *infra* (police protection benefit for purposes of broad class requirement). If a benefit flows only to institutions engaged in religious activity, it cannot be incidental. *But cf. Bradfield v. Roberts*, 175 U.S. 291, 297 (1899) (upholding aid to corporation whose members were all Catholic nuns running a charitable hospital, where the corporation's charter restricted it to secular activity). Subsection 2's heightened deterrence of criminal mischief benefits religious institutions exclusively. It is not incidental.

In a vigorous dissent, Justice Scalia derided *Bullock's* holding because he believed the tax exemption statute at issue was a reasonable accommodation of religion, and that the broad class requirement did not apply. *Bullock*, 489 U.S. at 29-45 (Scalia, J., dissenting). He pointed out that "[b]readth of coverage is essential to constitutionality whenever a law's benefiting of religious activity is sought to be defended not" on the basis of accommodation of

religion, "but as merely the incidental consequence of seeking to benefit *all* activity that achieves a particular secular goal." *Id.* at 40. Subsection 2 of the Criminal Mischief Act is not an accommodation of religion; it is an enhancement in punishment for the exclusive benefit of religion. The State and the district court of appeal have defended Subsection 2 on the basis that protecting property from criminal mischief is a legitimate secular goal. It is, but it must be pursued and achieved without preference for religious property. The district court of appeal's determination that Subsection 2 only incidentally benefits religious institutions as a consequence of pursuing this goal violates the principles Justice Scalia discussed in his *Bullock* dissent.

The Court has indicated there are benefits government can provide on the exclusive basis of religion without offending the Establishment Clause. In *Bullock*, the Court noted that "[c]ontrary to the dissent's claims," it was not "suggest[ing] that *all* benefits conferred exclusively upon religious groups or upon individuals on account of their religious beliefs [were] forbidden * * * unless they [were] mandated by the Free Exercise Clause." *Bullock*, 489 U.S. at 18 n.8. The Court gave two representative examples: *Zorach v. Clauson*, 343 U.S. 306 (1952), and *Corporation of the Presiding Bishop of the Church of Jesus Christ of the Latter-Day Saints v. Amos*, 483 U.S. 327 (1987).

Zorach was an Establishment Clause challenge to a statute allowing children to be released from public schools so that they could receive religious education. *Zorach*, 343 U.S. at 308. The Court upheld the statute on the basis that it was an accommodation of religion. *Id.* at 313-314. Similarly, *Amos* presented the question of whether a religious exemption in Title VII of the Civil Rights Act of 1964 violated the Establishment Clause. The Court rejected the argument that statutes giving special consideration to religious groups were per se invalid. *Amos*, 483 U.S. at 338. The Court explained: "Where * * * government acts with the proper purpose of lifting a regulation that burdens the exercise of religion, we see no

reason to require that the exemption come packaged with benefits to secular entities." *Id.* Neither *Zorach* nor *Amos* resemble this case because Subsection 2 does not accommodate religion.

The Court's recent decision in *Zobrest v. Catalina Foothills School District*, 113 S.Ct. 2466 (1993), does, however, provide a discussion of the type of governmental benefit that triggers a broad class analysis. In *Zobrest*, the Court indicated protection from criminal activity was a government benefit for purposes of the Establishment Clause breadth requirement. The Court observed: "[I]f the Establishment Clause bar[red] religious groups from receiving general government benefits * * * a 'church could not be protected by the police * * * department[] * * *.'" *Id.* at 2466 (Citing *Widmar*, 454 U.S. at 274-275) (internal quotation marks omitted in original)).[5] The Court explained such benefits to religious institutions could be permissible where the governmental action "neutrally provide[d] benefits to a *broad class* of citizens defined without reference to religion * * *." *Id.* (emphasis added).

The reasoning in *Bullock* and *Zobrest* follows a line of decisions recognizing the right of states to provide general governmental benefits to religious institutions where secular institutions similarly benefit. In *Roemer v. Board of Public Works of Maryland*, 426 U.S. 660, 746 (1976), the Court explained that "religious institutions need not be quarantined from public benefits that are neutrally available to all." The Court cited *Everson v. Board of Education*, 330 U.S. 1 (1947), where it had approved state-supplied school transportation for the benefit of students at both secular and sectarian schools, and *Board of Education v. Allen*, 392 U.S. 236 (1968), where it had allowed a state to loan secular textbooks to students at both secular and sectarian schools. In both

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[5]This language is taken from *Roemer v. Board of Public Works of Maryland, infra.*

Everson and *Allen*, as in *Waltz*, the Court relied upon the fact that the state was providing the questioned secular benefit to religious institutions as an incidental consequence of their inclusion within a class that could be defined in secular terms. The benefit was permissible, and did "not confer any imprimatur of state approval on religious sects or practices," *Widmar*, 454 U.S. at 274, because it was "part of a general program that '[was] in no way skewed toward religion.'" *Zobrest*, 113 S.Ct at 2467 (quoting *Witters v. Washington Department of Services for Blind*, 474 U.S. 481, 488 (1986)).

The district court of appeal reasoned the breadth requirement did not imperil Subsection 2 because of the additional protection Subsection 3 of the Criminal Mischief Statute provided public telephone property. App., *infra*, 8a-9a. However, the mere presence of one type of secular property receiving heightened protection does not rescue Subsection 2. Two types of property may create a class, but a class of two is certainly not broad enough to satisfy *Waltz*, *Bullock* and *Zobrest*.

Even if a class of two—one secular, one religious, and both receiving the same benefit in terms of deterrence from criminal mischief—could otherwise satisfy the broad class requirement, Subsection 2 would still fail: Deterrence under the Criminal Mischief Statute is not the same for religious and public telephone property. Subsection 3 only applies to public telephone property where (a) service has been disrupted; and (b) notice of the enhancement has been conspicuously posted. Subsection 2 applies to any criminal mischief upon religious property causing over $200 damage. Subsection 2 does not require notice, and it does not require that the functionality of the religious property be affected.

The district court of appeal was persuaded by the Illinois state court decision in *People v. Carter*, 228 Ill.App.3d 526,, 592 N.E. 2d 491, 170 Ill.Dec. 55 (Dist.Ct.App.1992), *appeal denied*, 146 Ill.2d 635, 602 N.E. 2d 461, 176 Ill.Dec. 807 (1992), *habeas corpus denied sub nom. U.S. ex rel. Carter v. Peters*, 1993 WL 335812 (N.D. Ill. 1993), *aff'd*, 26 F.3d 697 (CA7 1994), *cert. denied*, 115

S.Ct. 517 (1994) (App., *infra*, 5a-6a), a case in which the Court recently denied certiorari. *Carter* upheld a provision similar to Subsection 2. It should not have persuaded the district court of appeal, however, because it did not address the breadth requirement. The apparent reason *Carter* did not discuss the requirement was that the relevant provision *was* part of a very broad classification.[6]

Under *Bullock*, *Waltz*, and *Zobrest*, the State of Florida may not take action to additionally protect religious institutions from criminal mischief unless those institutions receive the enhanced protection incidental to their inclusion within a broad class.[7] Religious institutions are the exclusive beneficiaries of Subsection 2. The only secular property receiving heightened protection under the Criminal Mischief Statute is public telephone property, which only receives enhanced protection where damage interferes with the property's purpose and conspicuous notice of the additional punishment has been posted.

B. In assessing the Equal Protection Clause challenge, the district court of appeal correctly applied the rational basis test as the appropriate standard of review. App., *infra*, 10a. In doing so, however, the court again acknowledged that Subsection 2 benefits religion. The court justified its use of the rational basis test by citing *Amos*, 483 U.S. at 338-39, and stating: "[L]aws affording a uniform benefit to *all* religions should be analyzed under the rational basis test. Thus, the question before us is whether the

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[6]Chapter 38, Section 1005-5-3.2(a) of the 1989 Illinois Statutes included a list of 13 factors that could be used to enhance punishment. Only one concerned religion. The full text is included in the appendix. App., *infra*, 72a-73a.

[7]The State could, of course, raise penalties for *all* criminal mischief offenses in response to an increase in offenses upon religious institutions.

government has chosen a rational classification to further a legitimate end." App., *infra*, 10a.

The court found that the State of Florida had a legitimate interest in deterring acts of criminal mischief. To justify the heightened deterrence for religious property as a legitimate state end, the court relied upon the legislative staff summary (App., *infra*, 74a-75a) that opined: "It is believed that legislation of this type is necessary to curtail the increasing number of criminal mischief acts committed in a place [sic] of worship and in cemeteries."[8] *Id.* at 10a, 75a. The court referred to the staff summary as a statement of the "legislature's articulated purpose."[9] *Id.* at 7a. It is not. It is legislative history. Even if protecting religious property more than similar secular property were a legitimate state end, the court offered no reasoning to support its conclusion that Subsection 2 was rationally related to that end.

If the district court of appeal were correct that (a) any additional deterrence Subsection 2 provided religious institutions was so inconsequential as to eliminate Establishment Clause concerns in this case; and (b) the state had a legitimate need to protect religious property more than secular property, the heightened punishment meted out in the name of criminal deterrence would be so attenuated from its supposed purpose as to fail the rational relationship test. *See City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 446 (1985) ("The State may not rely on a classification whose relationship is so attenuated as to render the distinction arbitrary or irrational.") (citing *Zobel v. Williams*, 457

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[8]The Criminal Mischief Statute does not provide heightened deterrence for the benefit of secular cemeteries

[9]*See also* App., *infra*, 8a (discussing staff summary: "this stated legislative purpose, to which we give great deference").

U.S. 55, 61-63 (1982); *United States Department of Agriculture v. Moreno*, 413 U.S. 528, 535 (1973)).

Contrary to the court of appeal's decision, Subsection 2 of the Florida Criminal Mischief Statute violates both the Establishment Clause and the Equal Protection Clause. The Court should grant this petition to correct the Florida First District Court of Appeal's error.

II. The Question Presented Is Important.

In recent years, so-called "hate crime" legislation has been proliferating throughout the country. *See generally* Katz, Speak No Evil, Think No Evil: The Florida Hate Crime Law, 44 U. Fla. L. R. 695, 696 (1992). This Court struck St. Paul, Minnesota's Bias Motivated Crime Ordinance, St. Paul, Minn.Legis.Code § 292.02 (1990), in *R.A.V. v. City of St. Paul*, 112 S.Ct. 2538 (1992), on First Amendment grounds because the challenged law "prohibit[ed] otherwise permitted speech solely on the basis of the subjects the speech addresses." *Id.* at 2542. In *Wisconsin v. Mitchell*, 113 S.Ct 2194, 2196-2197 (1993), the Court upheld Wisconsin's hate crime legislation, Wis.Stat. §§ 939.645(1)(b) (1990), which enhanced the respondent's sentence because he had chosen his battery victim on the basis of race. Both the ordinance in *R.A.V.* and the statute in *Mitchell* applied to a broad class of secular and religious victims. St. Paul, Minn.Legis.Code § 292.02 ("Whoever places [an item] * * * which one * * * has reasonable grounds to know arouses anger, alarm or resentment in others on the basis of *race, color, creed, religion or gender* * * * shall be guilty of a misdemeanor.") (emphasis added); Wis.Stat. §§ 939.645(1)(b) (penalties for criminal activity enhanced where victim selected "because of the *race, religion, color, disability, sexual orientation, national origin or ancestry* of that person * * *.") (emphasis added). This case presents the opportunity for the Court to address the constitutionality of hate crime laws where they single-out religious institutions for enhanced protection secular institutions do not receive.

In 1988, Congress passed 18 U.S.C. 247, which, like Subsection 2 of the Florida Criminal Mischief Statute, elevated punishment for offenses against religious property. Act of June 24, 1988, Pub.L. 100-346, §1, 102 Stat. 644. As with Subsection 2, 18 U.S.C. 247 protects religious institutions without protecting a broad class of similar secular institutions.

Carter, *supra*, the Illinois decision upon which the district court of appeal relied, followed a New Mexico court's decision in *State v. Vogenthaler*, 548 P.2d 112 (N.M.Ct.App. 1976). *Vogenthaler* examined a church desecration statute, N.M.Stat. §40A-15-3 (1953), that singled-out religious property for the benefit of heightened deterrence. As with 18 U.S.C. 247 and Subsection 2 of the Florida Criminal Mischief Statute, the New Mexico statute did not provide heightened deterrence for the benefit of potential secular victims. *Vogenthaler*, 548 P.2d at 114-115.

Given the political popularity of hate crime legislation, and the presence of existing precedent erroneously upholding such laws where they single-out religious property for heightened protection not accorded secular property, the Court should grant the petition.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

John G. Crabtree
Counsel of Record

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October 1994

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. ____

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1994

JASON TODD AND JOSEPH HUGH HUTCHINSON, *Petitioners*,

v.

STATE OF FLORIDA, *Respondent*.

On Petition for a Writ of Certiorari to the
Florida First District Court of Appeal

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

John G. Crabtree
Counsel of Record

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October 1994

78 pp

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IN THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, STATE OF FLORIDA

JASON TODD,

Appellant,

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED.

v.

CASE NO. 92-4116

STATE OF FLORIDA,

Appellee,

and

JOSEPH HUGH HUTCHINSON,

Appellant,

v.

CASE NO. 92-4136

STATE OF FLORIDA,

Appellee.

_____/

Opinion filed August 22, 1994.

An appeal from the Circuit Court for Columbia County.
L. Arthur Lawrence, Jr., Judge.

John G. Crabtree of Messer, Vickers, Caparello, Madsen, Lewis, Goldman & Metz, P.A., Tallahassee, for Appellants.

Robert A. Butterworth, Attorney General, James W. Rogers, Senior Assistant Attorney General, Office of the Attorney General, Tallahassee; Michael J. Neimand, Assistant Attorney General, Office of the Attorney General, Department of Legal Affairs, Miami, for Appellee.

Amici Curiae: Mitchell Horwich, Coral Gables; Marc D. Stern and Lois C. Waldman, American Jewish Congress, New York; Thomas A. Horkan, Jr., Florida Catholic Conference, Tallahassee.

MINER, J.

In these two cases, which have been consolidated for the purposes of briefing, oral argument and opinion, the appellants challenge, on constitutional grounds, section 806.13(2), Florida Statutes (1991), which makes it a felony to deface a church, synagogue, mosque or other place of worship or its religious contents. Additionally, appellant Todd, a minor at the time of sentencing, contends that the trial court, contrary to section 39.059(7), Florida Statutes (1991), failed to make written findings of fact or state in writing the reasons for its decision to impose adult sanctions against him. Finding no merit in such argument, we affirm on that point without further discussion. As to the constitutional challenges to section 806.13(2), which are issues of first impression in Florida, we conclude that the statute does not violate any constitutional command and therefore affirm.

The facts in these two cases are without dispute. Appellants were charged with three counts of criminal mischief each in violation of section 806.13(2), which makes it a third-degree felony to willfully and maliciously cause between $200 and $1,000 damage to a place of worship or its religious

contents. Specifically, appellants were accused of spray painting three churches in Columbia County with anti-religious symbols and words. Appellants filed motions to dismiss, asserting state and federal equal protection and religion establishment challenges to the statute. Those motions were denied, and appellants subsequently pled no contest to the charges, reserving their rights to appeal the denial of the motions to dismiss. They were convicted and sentenced to serve 48 hours in jail followed by five years of probation and to perform 150 hours of community service for each count, with the probationary sentences to be served consecutively. This appeal followed.

STANDARD OF REVIEW

This court is obligated to honor the strong presumption in favor of the constitutionality of statutes. All doubt will be resolved in favor of the constitutionality of a statute, and an act will not be declared unconstitutional unless it is determined to be invalid beyond a reasonable doubt. State v. Kinner, 398 So.2d 1360, 1363 (Fla. 1981).

I. ESTABLISHMENT CAUSE

Appellants challenge section 806.13, Florida Statutes (1991), and particularly that portion of the statute which makes it a felony to deface a place of worship,[1] asserting that it

---

[1]Section 806.13 provides as follows:

806.13 Criminal mischief.--

(1)(a) A person commits the offense of criminal mischief if he willfully and maliciously injures or damages by any means any real or personal property belonging to another, including, but not limited to, the placement of graffiti thereon or other acts of vandalism thereto.

(b)1. If the damage to such property is $200 or less, it is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

violates the Establishment Clauses of both the state and federal

---

2. If the damage to such property is greater than $200 but less than $1,000, it is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

3. If the damage is $1,000 or greater, or if there is interruption or impairment of a business operation or public communication, transportation, supply of water, gas or power, or other public service which costs $1,000 or more in labor and supplies to restore, it is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Any person who willfully and maliciously defaces, injures, or damages by any means any church, synagogue, mosque, or other place of worship, or any religious article contained therein, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the damage to the property is greater than $200.

(3) Whoever, without the consent of the owner thereof, willfully destroys or substantially damages any public telephone, or telephone cables, wires, fixtures, antennas, amplifiers, or any other apparatus, equipment, or appliances, which destruction or damage renders a public telephone inoperative or which opens the body of a public telephone, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084; provided, however, that a conspicuous notice of the provisions of this subsection and the penalties provided shall have been posted on or near the destroyed or damaged instrument and visible to the public at the time of the commission of the offense.

(4) Any person who violates a provision of this section may, in addition to any other criminal penalty, be required to pay for the damages caused by such offense.

(Emphasis added.)

constitutions. The Establishment Clause of the First Amendment to the United States Constitution provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."[2] Article I, Section 3, of the Florida Constitution is substantially the same. It provides: "There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof."[3] The Establishment Clause was intended to afford protection against sponsorship, financial support, and active involvement of the sovereign in religious activities. Lemon v. Kurtzman, 403 U.S. 602, 612, 91 S. Ct. 2105, 2111, 29 L. Ed. 2d 745, 755 (1971). Three tests have been developed to determine whether a statute violates the Establishment Clause. First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; and third, the statute must not foster excessive government entanglement with religion. Id. at 612-13, 91 S.Ct. at 2111, 209 L. Ed. 2d at 755.

Although not controlling, we find People v. Carter, 592 N.E.2d 491 (Ill. Ct. App.), appeal denied, 602 N.E.2d 461 (Ill. 1992), persuasive in determining that section 806.13(2) does not violate the Establishment Clause. In Carter, the defendant raised an establishment challenge to a criminal

---

[2]The First Amendment is applicable to the states through the Fourteenth Amendment. Hobbie v. Unemployment Appeals Comm'n of Fla., 480 U.S. 136, 139-40, 107 S.Ct. 1046, 1048, 94 L.Ed. 2d 190 197 (1987).

[3]Because the language regarding establishment in the Florida constitution parallels the language of the First Amendment, federal law will be of great value in determining issues under Florida's constitution. See 25A Fla. Stat. Ann. 79 (1991 (Commentary).

statute that permitted the sentencing court to impose a more severe sentence upon a defendant who committed an offense in a place of worship. In determining that the statute did not violate the Establishment Clause, the court applied the tests announced in Lemon. The court found that the articulated purpose, i.e., to protect places of worship and those who use them, provided the requisite secular basis. The statute merely reflected the legislature's determination that crimes committed in such places, like crimes against the elderly, are more repugnant to the community than some other offenses. It acknowledges our country's long tradition of respect for the free exercise of religion. Id. at 497. In determining that the statute's primary effect did not advance religion, the court found that the statute's primary effect falls on criminals rather than their victims. While some benefit was conferred on those who attend religious services in houses of worship, the court concluded that such benefit was too indirect to violate the Establishment Clause. Id. at 498. Citing State v. Vogenthaler, 548 P.2d 112 (N.M. Ct. App. 1976), which upheld a statute that criminalized defacing a church, the court noted that statutes which provide penalties for damaging property do not advance religion. Id. As to the question of excessive entanglement, the court found none, because the statute did not benefit religious institutions other than indirectly and it did not establish a continuing relationship between the religious institutions and government which required day-to-day surveillance or administration of religious activities. Id. After considering the Lemon tests, we agree with the result in Carter, as indicated in the following analysis.

A. Turning to the first test, secular legislative purpose, as explained in Corporation of the Presiding Bishop of the Church of Jesus Christ of the Latter-Day Saints v. Amos, 483 U.S. 327, 107 S.Ct. 2862, 90 L. Ed. 2d 273 (1987), this does not mean that the law's purpose must be unrelated to religion -- that would amount to a requirement that

the government show a callous indifference to religious groups, which the Establishment Clause has never been interpreted to mean. Rather, the purpose requirement is aimed at preventing the government from abandoning neutrality and acting with the intent of promoting a particular point of view in religious matters. To warrant a finding that a statute is unconstitutional for lack of secular purpose, the challenge must demonstrate conclusively that the statute was motivated wholly by religious consideration. Lynch v. Donnelly, 465 U.S. 668, 680, 104 S. Ct. 1355, 1362, 79 L. Ed. 604, 614 (1984). The relevant inquiry is the legislative purpose of the statute and not the possible religious motives of the legislators. Board of Educ. of Westside Community v. Mergens, 496 U.S. 226, 249, 110 S. Ct. 2356, 2371, 110 L. Ed. 2d 191, 215 (1991). Edwards v. Aguillard, 482 U.S. 578, 586-87, 107 S.Ct. 2573, 2579, 96 L.Ed. 2d 510, 521 (1987) (court is normally deferential to state's articulation of a secular purpose).

In the instant case, the Staff Summary and Analysis concerning the addition of subsection 806.13(2) provides: "It is believed that legislation of this type is necessary to curtail the increasing number of criminal mischief acts committed in a place of worship and in cemeteries." Since the legislature's articulated purpose was to deter criminal mischief, it cannot be said that the statute lacks a secular purpose. See Lynch (concluding that city's inclusion of nativity scene in its Christmas display did not violate the Establishment Clause, because there were legitimate secular purposes for its inclusion, i.e., to celebrate the holiday and depict the origins of it); Lemon (where statutes for providing financial support to non-public schools and paying supplements to teachers in non-public schools were aimed at improving secular education in all schools, the legislative purpose was not to advance religion, rather the state had a legitimate concern in maintaining minimum standards in all schools); Committee for Pub. Educ. & Religious Liberty v. Nyquist, 413 U.S. 756, 93 S. Ct. 2955,

37 L. Ed. 2d 948 (1973) (where legislature specified purposes for law granting financial aid to non-public schools were to preserve health and safe environment for all children, promote pluralism and diversity, and to avoid overburdening the public school system, all those were legitimate secular considerations and did not require a finding of unconstitutionality under the first test). Appellants' argument ignores this stated legislative purpose, to which we give great deference, and instead relies on their assumption of the legislative purpose.

Appellant's reliance on Texas Monthly, Inc. v. Bullock, 489 U.S. 1, 109 S. Ct. 890, 103 L. Ed. 2d 1 (1989), for the notion that a statute which confers a benefit only on religious institutions or organizations cannot have a secular purpose, to prove that section 806.13 necessarily lacks a secular purpose is misplaced for two reasons. First, Bullock dealt with a tax exemption which directly benefited religious organizations as it granted the exemption to religious literature. Here, the statute does not directly benefit religious organizations in that it merely increases the penalty when criminal mischief is committed to houses of worship. Carter. Second, unlike Bullock, where the exemption only applied to religious literature, an increased penalty under section 806.13 also applies to criminal mischief involving telephone services. § 806.13(3), Fla. Stat. (1991). Thus, Bullock does not compel a finding of a nonsecular purpose.

B. Turning to the second test, the principal or primary effect of advancing religion, the law's purpose or effect must be to "endorse" religion for the law to be violative of the Establishment Clause. County of Allegheny v. American Civil Liberties Union Greater Pittsburgh Chapter, 492 U.S. 573, 592, 109 S. Ct. 3086, 3100, 106 L. Ed. 2d 472, 494 (1989). The government is prohibited from conveying the message that religion or a particular religious belief is favored or preferred. Id. at 593, 109 S. Ct. at 3101, 106 L. Ed. 2d at 494. As explained in Corporation of Presiding Bishops, 438

U.S. at 337, 107 S. Ct. at 2869, 97 L. Ed. 2d at 283, for a law to have forbidden effects, it must be fair to say that the government itself has advanced religion through its own activities and influence.

Here, although appellants have argued that section 806.13(2)'s primary effect or purpose is to benefit houses of worship, the statute clearly shows that its primary purpose is to punish those who deface all sorts of property, including religious property. Admittedly, there is some benefit to religious institutions since there is a greater deterrence for criminal mischief involving religious property, but such benefit is indirect. Carter. As noted in Bullock, 489 U.S. at 10, 109 S. Ct. at 897, 103 L. Ed. 2d at 10, government policies with secular policies may incidentally benefit religion. Thus, it cannot be said that the statute's primary effect is to advance or endorse religion.

In so saying, we once again reject appellants' reliance on Bullock's breadth analysis. This is not a situation where the law only applies to religious institutions; an enhanced penalty also applies to criminal mischief involving telephone services.

C. As for the third test, that of excessive entanglement, appellant has argued that the statute causes excessive entanglement because the state will have to determine what an "other place of worship" is and what "religious articles" are. The entanglement which is forbidden is comprehensive, discriminating and continuing state surveillance, Lynch, 465 U.S. at 684, 104 S. Ct. at 1365, 79 L. Ed. 2d at 617; day-to-day surveillance or administration of religious activities, Board of Educ. of Westside Community Schs. v. Mergens, 496 U.S. 226, 252-53, 110 S. Ct. 2356, 2373, 110 L. Ed. 2d 191, 217 (1990); and programs whose very nature are apt to entangle the state in the details of administration, Lemon, 403 U.S. at 614-15, 91 S. Ct. at 2112, 29 L. Ed. 2d at 757. We fail to see how determining whether defaced property is a place of worship or a religious article

therein constitutes the type of entanglement contemplated by the Establishment Clause test. Accord Carter.

In conclusion, because section 806.13(2) passes muster under each of the tests set out in Lemon, the trial court's order denying appellants' motions to dismiss should be affirmed as to the Establishment Clause issue.

II. EQUAL PROTECTION

Appellants argue that they are denied equal protection, because section 806.13 treats acts of criminal mischief differently depending upon whether they involve secular or religious property. In regard to equal protection, the Florida Constitution provides that "[a]ll natural persons are equal before the law," and the Fourteenth Amendment to the United States Constitution provides that no state may "deny to any person within its jurisdiction the equal protection of the law." Art. I, § 2, Fla. Const.; U.S. Const. amend. XIV, § 1. The Equal Protection clause does not, however, deny to states the power to treat different classes of persons in different ways so long as such classifications are reasonably related to a legitimate state interest. Stall v. State, 570 So.2d 257, 262 n.7 (Fla. 1990), cert. denied sub nom. Long v. Florida, ___ U.S. ___, 111 S. Ct. 2888, 115 L. Ed. 2d 1054 (1991).

In determining the equal protection challenge in the instant case, it has been conceded that the rational basis test is the appropriate standard. See Corporation of Presiding Bishop, 483 U.S. at 338-39, 107 S.Ct. at 2870, 97 L. Ed. 2d at 285 (laws affording a uniform benefit to all religions should be analyzed under the rational basis test). Thus, the question before us is whether the government has chosen a rational classification to further a legitimate end.

As discussed under Issue I, subsection A, the state has a legitimate interest in deterring crime. Moreover, as indicated in the staff summary and analysis, there is an increasing number of criminal mischief acts perpetrated against religious institutions. The statute's enhanced penalties for acts against

such institutions are rationally related to a legitimate state interest. Therefore, the law does not violate the Equal Protection Clause. Walker v. State, 501 So.2d 156 (Fla. 1st DCA 1987) (assault and battery statute which divides people for sentencing purposes into two classes, i.e., those subject to the discipline of the school and who are not, did not violate the Equal Protection Clause, because the legislative aims to maintain and protect the integrity of the school setting and standing of teachers as role models were legitimate objectives, and the statute's effect, i.e., enhancing the penalty from a misdemeanor to a felony for battery or a school board employee when the defendant is not subject to school discipline, was rationally related to achieve the intended end). Consequently, the trial court's order should be affirmed as to the equal protection issue.

AFFIRMED.

SMITH, SENIOR JUDGE, and PADOVANO, PHILIP J., ASSOCIATE JUDGE, CONCUR.

IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR COLUMBIA COUNTY, FLORIDA.

STATE OF FLORIDA

-vs- CASE NO. 92-370-CF

JASON TODD

Defendant(s)

ORDER

THIS CAUSE was heard on the Motions to Dismiss filed in the respective criminal cases by counsel for Defendant Hutchingson [sic] and Defendant Todd. The Court has considered the Motions to Dismiss and the Memorandum of Law filed to support the Motions, the Memorandum of Law filed by the State and the Amicus Curiae Brief of the American Jewish Congress.

Florida Statute 806.13(2) is Constitutional and does not violate the United States Constitution or the constitution of the State of Florida. The Motions to Dismiss filed in the Joseph Hutchingson and Jason Todd case are DENIED.

In Lemon v. Kurtzman (1971), 403 U.S. 602, 91 S.Ct. 2105, 29 L.E.D. 745, the Supreme Court held that a statute does not violate the Establishment Clause of the First Amendment if it has a valid secular purpose, does not advance nor inhibit religion and does not foster excessive entanglement with religion.

Florida Statute 806.13(2) has a valid secular purpose and there is no evidence that the statute was wholly motivated by religious considerations. Churches and other places of worship make a unique contribution to the pluralism of American Society. See State vs. Vogenthaler, 548 P. 2d 112 (N.M. Ct. App. 1976). Places of worship

are uniquely vulnerable buildings in that they are often vacant especially at night when acts of criminal mischief typically occur.

The statute in question does not advance nor inhibit religion, it is only a penalty enhancing statute that applies to what would otherwise be unlawful conduct under Florida Statute 806.13(1). Likewise, the statute does not foster excessive entanglement with religion as places of worship would be afforded protection without the benefit of Florida Statute 806.13(2).

Florida Statute 806.13(2) does not violate the right to equal protection under the United States Constitution or the Constitutional of the State of Florida. The State has a compelling interest in protecting places of worship from vandalism and all individuals who unlawfully vandalize places of worship are treated equally just as all places of worship are treated equally under the law.

DONE AND ORDERED in Chambers in Lake City, Columbia County, Florida, this 6th day of OCTOBER, 1992.

/s/
L. Arthur Lawrence, Jr.
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U. S. Mail/Hand Delivery to Phyllis E. Rosier, Assistant State Attorney, P. O. Box 551, Lake City, FL. 32056; Wade Griffin, Attorney At Law, P. O. box 2149, Lake City, FL 32056; and to Duncan Jones, Assistant Public Defender, P. O. Drawer 1209, Lake City, FL 32056, this 7th day of OCTOBER, 1992.

/s/
PERSON SENDING COPIES

IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR COLUMBIA COUNTY, FLORIDA.

STATE OF FLORIDA

-vs- CASE NO. 92-370-CF

JASON TODD

Defendant(s)

ORDER

THIS CAUSE was before the Court for sentencing on November 3, 1992. Pursuant to Chapter 39 of the Florida Statutes, the Court declines to impose juvenile sanctions and as grounds, would show:

1. The Court has received and considered the Predisposition Report prepared by the Department of Health and Rehabilitative Services. All interested parties, including the Defendant, his attorney and his parents or custodian have had an opportunity to comment on the issue of sentence and any proposed rehabilitation plan to be offered in this case.

2. The Defendant is before the Court to be sentenced on the following charges: Criminal Mischief (3 cts).

3. The offenses for which the Defendant is being sentenced are serious and the protection of the community requires adult disposition.

4. The offenses was committed in a willful manner.

5. The nature of the present criminal offenses considered together with the record and previous history of the Defendant (including contacts with the department, law enforcement agencies, courts, prior records of community control, and commitment) indicate that there are no reasonable prospects of rehabilitation in the juvenile system.

6. It is in the best interest of the public that the Defendant be sentenced as an adult in this cause.

7. Jason Todd will be 18 years of age on December 13, 1974, and owes a significant amount of restitution. Juvenile sanctions are not of sufficient duration considering the seriousness of the offense and the impact on the community.

DONE AND ORDERED in Chambers at the Columbia County Courthouse in Lake City, Florida this 3rd day of November, A.D., 1992.

/s/
CIRCUIT COURT JUDGE

Copies to:

Phyllis E. Rosier
Assistant State Attorney
P. O. Box 551
Lake City, FL 32056

Wade Griffin
Attorney for Defendant
P. O. Box 2149
Lake City, FL 32056

In the Circuit Court, Third Judicial Circuit, in and for Columbia County, Florida.
Division: Felony
Case Number: 92-370 CF

State of Florida

v.

Jason Oneil Todd

Defendant.

JUDGMENT

The Defendant, Jason Oneil Todd, being personally before this court represented by Wade Griffin, the attorney of record, and the state represented by Phyllis Rosier, and having

___ been tried and found guilty by jury/by court of the following crime(s)

___ entered a plea of guilty to the following crime(s)

_X_ entered a plea of nolo contendere to the following crime(S)

Count	Crime	Offense Statute Number	Degree of Crime	Case Number	OBTS Number
I	Criminal Mischief	80613	F3°	92-370	5587503
II	Criminal Mischief	80613	F3°	92-370	5587503
III	Criminal Mischief	80613	F3°	92-370	5587503

_X_ and no cause being shown why the defendant should not be adjudicated guilty, IT IS ORDERED THAT the defendant is hereby ADJUDICATED GUILTY of the

above crime(s).

___ and pursuant to section 943.325, Florida Statutes, having been convicted of attempts or offenses relating to sexual battery (ch. 794) or lewd or lascivious conduct (ch.800) the defendant shall be required to submit blood specimens.

___ and good cause being show; IT IS ORDERED THAT ADJUDICATION OF GUILT BE WITHHELD.

___ the defendants Drivers License shall be suspended for ___ years.

FINGERPRINTS OF DEFENDANT

1. Right Thumb	2. Right Index	3. Right Middle
4. Right Ring	5. Right Little	6. Left Thumb
7. Left Index	8. Left Middle	9. Left Ring
10. Left Little		

Fingerprints taken by: /s/

I HEREBY CERTIFY that the above and foregoing are the fingerprints of the defendant, JASON ONEIL TODD, and that they were placed thereon by the defendant in my presence in open court of this date.

DATE AND ORDERED in open court in LAKE CITY, COLUMBIA County, Florida, this 3rd day of November, 1992.

/s/ L. ARTHUR LAWRENCE, JR.
Judge

In the Circuit Court, Third Judicial Circuit, in and for Columbia County, Florida.
Division: Felony
Case Number: 92-353 CF

State of Florida

v.

Joseph Hugh Hutchingson

Defendant.

JUDGMENT

The Defendant, Joseph Hugh Hutchingson, being personally before this court represented by Duncan Jones, the attorney of record, and the state represented by Phyllis Rosier, and having

___ been tried and found guilty by jury/by court of the following crime(s)

___ entered a plea of guilty to the following crime(s)

_X_ entered a plea of nolo contendere to the following crime(S)

Count	Crime	Offense Statute Number	Degree of Crime	Case Number	OBTS Number
I	Criminal Mischief	80613 3	F3°	92-353	5587500
II	Criminal Mischief	80613 3	F3°	92-353	5587500
III	Criminal Mischief	80613 3	F3°	92-353	5587500

_X_ and no cause being shown why the defendant should not be adjudicated guilty, IT IS ORDERED THAT the defendant is hereby ADJUDICATED GUILTY of the

above crime(s).

___ and pursuant to section 943.325, Florida Statutes, having been convicted of attempts or offenses relating to sexual battery (ch. 794) or lewd or lascivious conduct (ch.800) the defendant shall be required to submit blood specimens.

___ and good cause being show; IT IS ORDERED THAT ADJUDICATION OF GUILT BE WITHHELD.

___ the defendants Drivers License shall be suspended for ___ years.

FINGERPRINTS OF DEFENDANT

1. Right Thumb	2. Right Index	3. Right Middle
4. Right Ring	5. Right Little	6. Left Thumb
7. Left Index	8. Left Middle	9. Left Ring
10. Left Little		

Fingerprints taken by: /s/

I HEREBY CERTIFY that the above and foregoing are the fingerprints of the defendant, JOSEPH HUGH HUTCHINGSON, and that they were placed thereon by the defendant in my presence in open court of this date.

DATE AND ORDERED in open court in LAKE CITY, COLUMBIA County, Florida, this 3rd day of November, 1992.

/s/ L. ARTHUR LAWRENCE, JR.
Judge

In the Circuit Court, Third Judicial Circuit,
in and for Columbia County, Florida.
Division: Felony
Case Number: 92-370 CF
Count I, II, III

State of Florida

v.

Jason Oneil Todd

Defendant.

ORDER OF PROBATION

This cause coming on this day to be heard before me, and you, the defendant Jason Todd, being now present before me and you having:

____ entered a plea of guilty
_X_ entered a plea of nolo contendere to
____ been found guilty by jury verdict to
____ been found guilty by the court trying the case with a jury of the offense(s) of

CT I - Criminal Mischief
CT II - Criminal Mischief
CT III - Criminal Mischief

SECTION I: Judgment of Guilty

_X_ The Court hereby adjudges you to be guilty of the above offense(s).

Now, therefore it is ordered and adjudged that you be placed on probation for a period of 5 years, each count consecutive (15 years total) under the supervision of the Department of Corrections, subject to Florida law.

SECTION 2: Order Withholding Adjudication

___ Now therefore, it is ordered and adjudged that the adjudication of guilt is hereby withheld and that you be placed on probation for a period of _____ under the supervision of the Department of Corrections, subject to Florida law.

It is further ordered that you shall comply with the following conditions and sanctions of probation:

(1) Not later than the fifth of each month, you will make a full and truthful report to your Probation Officer on the form provided for that purpose.

(2) You will pay to the State of Florida the amount of $40.00 per month toward the cost of your supervision unless otherwise waived in compliance with Florida Statutes.

(3) You will not change your residence or employment or lave the county of your residence without first procuring the consent of your Probation Officer.

(4) You will neither possess, carry or own any weapons or firearm without first securing the consent of your Probation Officer.

(5) You will live and remain at liberty without violating any law. A conviction in a court of law shall not be necessary in order for such a violation to constitute a violation of your probation.

(6) You will not use intoxicants to excess; nor will you visit places where intoxicants, drugs or other dangerous substances are unlawfully sold, dispensed or used.

(7) You will work diligently at a lawful occupation and support any dependents to the best of your ability, as directed by your Probation Officer.

(8) You will promptly and truthfully answer all inquiries directed to you by the Court or the Probation Officer, and

allow the Officer to visit in your home, at your employment site or elsewhere, and you will comply with all instructions he/she may give you.

(9) You will submit to and pay for random urinalysis, breathalizer, or blood test at any time requested by your probation officer, or the professional staff of any treatment center where you are receiving treatment, to determine possible use of alcohol, drugs, or controlled substances.

SPECIAL CONDITIONS

X You will perform 150 hours of public service work as directed by your probation officer, for a total of 150 hours in all counts.

X You will submit to an evaluation by the TASC Program, comply with all recommendations, dn be responsible for all cost incurred in said program.

X You will submit to mental health counseling as directed by your probation officer and shall be responsible for the payment of any costs incurred while receiving said counseling.

You are to enter the Department of Corrections Non-Secure Drug Treatment Program, or other residential treatment program, as approved by your probation officer. You are to remain until you successfully complete said Program and you are to comply with all Rules and Regulations of the Program. You are/are not confined in the county jail until placement in said program, and if you are confined the Sheriff of _____ County is ordered to transport you to said program.

You will have no contact with victim(s) in this case.

You will have no contact with children under 16 years of age unless an adult is present who is aware of this conviction.

X You shall abstain from the use of any alcoholic beverages.

You shall make a good faith effort to obtain your GED/high school diploma.

You will report to the Probationers Education Growth (P.E.G.) Program for an evaluation of your educational level. You will be referred into the appropriate Adult Education Program. You will attend class on a regular basis as determined by your probation officer and PEG personnel. Your progress will be monitored and reports will be furnished to your probation officer.

You shall take Antabuse if so deemed medically feasible and you shall pay all costs for treatment.

You shall participate in and successfully complete the programs of the Probation and Restitution Center for a period of _____. You shall report to the Center when and as directed by your probation officer.

X You shall be confined to the county jail for a period of a 48 hour weekend with credit for NO jail time.

You shall report to the Lake City Probation Office, 1992 South First Street, Lake City, Florida immediately upon release.

X You will pay restitution, cost and/or fees in accordance with attached.

This case is to run concurrent/consecutive to prison sentence/community control/probation/county jail received in Case #_____-.

X Other: You will submit to a psychological Evaluation, and shall be responsible for the payment of any costs incurred.

X You will abide by a curfew of 9:00 p.m. on weeknights and

10:00 p.m. on the weekends unless otherwise given written permission by your probation officer.

You are hereby placed on notice that the Court may at any time rescind or modify any of the conditions or your probation, or may extend the period of probation as authorized by law, or may discharge you from further supervision; and that if you violate any of the conditions of your probation, you may be arrested and the Court may revoke your probation, and impose any sentence which it might have imposed before placing you on probation.

If is further ordered that when you have reported to the Probation Officer and have been instructed as to the conditions of probation you shall be released from custody if you are in custody and if you are at liberty on bond, the sureties thereon shall stand discharged from liability.

It is further ordered that the Clerk of this Court file this order in his/her office, record the same in the Minutes of the Court, and forthwith provide copies of same to the Probation Officer for his/her use in compliance with the requirements of law.

DONE AND ORDERED IN OPEN COURT, this the 3rd day of November, 1992, and confined in writing this 3rd day of November, 1992.

/s/
Circuit Judge

I acknowledge receipt of a copy of this order and that the conditions have been explained to me.

Date:_____ _____
Probationer

Instructed by:_____
Correctional Probation Officer

In the Circuit Court, Third Judicial Circuit,
in and for Columbia County, Florida.
Division: Felony
Case Number: 92-353 CF
Count I, II, III

State of Florida

v.

Joseph Hugh Hutchingson

Defendant.

ORDER OF PROBATION

This cause coming on this day to be heard before me, and you, the defendant Joseph Hutchingson, being now present before me and you having:

_____ entered a plea of guilty
_X_ entered a plea of nolo contendere to
_____ been found guilty by jury verdict to
_____ been found guilty by the court trying the case with a jury of the offense(s) of

CT I - Criminal Mischief
CT II - Criminal Mischief
CT III - Criminal Mischief

SECTION I: Judgment of Guilty

_X_ The Court hereby adjudges you to be guilty of the above offense(s).

Now, therefore it is ordered and adjudged that you be placed on probation for a period of 5 years, each count consecutive (15 years total) under the supervision of the Department of Corrections, subject to Florida law.

SECTION 2: Order Withholding Adjudication

___ Now therefore, it is ordered and adjudged that the adjudication of guilt is hereby withheld and that you be placed on probation for a period of _____ under the supervision of the Department of Corrections, subject to Florida law.

It is further ordered that you shall comply with the following conditions and sanctions of probation:

(1) Not later than the fifth of each month, you will make a full and truthful report to your Probation Officer on the form provided for that purpose.

(2) You will pay to the State of Florida the amount of $40.00 per month toward the cost of your supervision unless otherwise waived in compliance with Florida Statutes.

(3) You will not change your residence or employment or lave the county of your residence without first procuring the consent of your Probation Officer.

(4) You will neither possess, carry or own any weapons or firearm without first securing the consent of your Probation Officer.

(5) You will live and remain at liberty without violating any law. A conviction in a court of law shall not be necessary in order for such a violation to constitute a violation of your probation.

(6) You will not use intoxicants to excess; nor will you visit places where intoxicants, drugs or other dangerous substances are unlawfully sold, dispensed or used.

(7) You will work diligently at a lawful occupation and support any dependents to the best of your ability, as directed by your Probation Officer.

(8) You will promptly and truthfully answer all inquiries directed to you by the Court or the Probation Officer, and

allow the Officer to visit in your home, at your employment site or elsewhere, and you will comply with all instructions he/she may give you.

(9) You will submit to and pay for random urinalysis, breathalizer, or blood test at any time requested by your probation officer, or the professional staff of any treatment center where you are receiving treatment, to determine possible use of alcohol, drugs, or controlled substances.

SPECIAL CONDITIONS

X You will perform 150 hours of public service work as directed by your probation officer, for a total of 150 hours in all counts.

X You will submit to an evaluation by the TASC Program, comply with all recommendations, dn be responsible for all cost incurred in said program.

X You will submit to mental health counseling as directed by your probation officer and shall be responsible for the payment of any costs incurred while receiving said counseling.

You are to enter the Department of Corrections Non-Secure Drug Treatment Program, or other residential treatment program, as approved by your probation officer. You are to remain until you successfully complete said Program and you are to comply with all Rules and Regulations of the Program. You are/are not confined in the county jail until placement in said program, and if you are confined the Sheriff of _____ County is ordered to transport you to said program.

You will have no contact with victim(s) in this case.

You will have no contact with children under 16 years of age unless an adult is present who is aware of this conviction.

X You shall abstain from the use of any alcoholic beverages.

You shall make a good faith effort to obtain your GED/high school diploma.

You will report to the Probationers Education Growth (P.E.G.) Program for an evaluation of your educational level. You will be referred into the appropriate Adult Education Program. You will attend class on a regular basis as determined by your probation officer and PEG personnel. Your progress will be monitored and reports will be furnished to your probation officer.

You shall take Antabuse if so deemed medically feasible and you shall pay all costs for treatment.

You shall participate in and successfully complete the programs of the Probation and Restitution Center for a period of _____. You shall report to the Center when and as directed by your probation officer.

X You shall be confined to the county jail for a period of a 48 hour weekend with credit for NO jail time.

You shall report to the Lake City Probation Office, 1992 South First Street, Lake City, Florida immediately upon release.

X You will pay restitution, cost and/or fees in accordance with attached.

This case is to run concurrent/consecutive to prison sentence/community control/probation/county jail received in Case #_____-.

X Other: You will submit to a psychological Evaluation, and shall be responsible for the payment of any costs incurred.

X You will abide by a curfew of 9:00 p.m. on weeknights and

10:00 p.m. on the weekends unless otherwise given written permission by your probation officer.

You are hereby placed on notice that the Court may at any time rescind or modify any of the conditions or your probation, or may extend the period of probation as authorized by law, or may discharge you from further supervision; and that if you violate any of the conditions of your probation, you may be arrested and the Court may revoke your probation, and impose any sentence which it might have imposed before placing you on probation.

If is further ordered that when you have reported to the Probation Officer and have been instructed as to the conditions of probation you shall be released from custody if you are in custody and if you are at liberty on bond, the sureties thereon shall stand discharged from liability.

It is further ordered that the Clerk of this Court file this order in his/her office, record the same in the Minutes of the Court, and forthwith provide copies of same to the Probation Officer for his/her use in compliance with the requirements of law.

DONE AND ORDERED IN OPEN COURT, this the 3rd day of November, 1992, and confined in writing this 3rd day of November, 1992.

/s/
Circuit Judge

I acknowledge receipt of a copy of this order and that the conditions have been explained to me.

Date:_____ _____
Probationer

Instructed by:_____
Correctional Probation Officer

In the Circuit Court, Third Judicial Circuit,
in and for Columbia County, Florida.

Case Number: 92-370 CF

State of Florida *

v. *

Jason Oneil Todd *

Defendant. *

_____*

ORDER APPOINTING PUBLIC DEFENDER
AS COUNSEL ON APPEAL

THE DEFENDANT having been adjudged insolvent and it appearing the Court that the Defendant continues to be insolvent, it is hereby

ORDERED AND ADJUDGED that the Office of the Public Defender, Third Judicial Circuit, be and is hereby appointed to represent the Defendant on appeal to the First District Court of Appeal.

DONE AND ORDERED this 4th day of December, 192.

/s/ L. Arthur Lawrence, Jr.
Circuit Judge

I HEREBY CERTIFY that a copy hereof has been furnished to DUNCAN A. JONES, Assistant Public Defender, P. O. Drawer 1209, Lake City, FL and to PHYLLIS ROSIER, Assistant State Attorney, P.O. Box 551, Lake City, FL this 4th day of December, 1992.

NAME: Duncan A. Jones
POSITION: Assistant Public Defender

In the Circuit Court, Third Judicial Circuit,
in and for Columbia County, Florida.

Case Number: 92-353 CF

State of Florida *

v. *

Joseph Hugh Hutchingson *

Defendant. *

_____ *

ORDER APPOINTING PUBLIC DEFENDER
AS COUNSEL ON APPEAL

THE DEFENDANT having been adjudged insolvent and it appearing the Court that the Defendant continues to be insolvent, it is hereby

ORDERED AND ADJUDGED that the Office of the Public Defender, Third Judicial Circuit, be and is hereby appointed to represent the Defendant on appeal to the First District Court of Appeal.

DONE AND ORDERED this 4th day of December, 192.

/s/ L. Arthur Lawrence, Jr.
Circuit Judge

I HEREBY CERTIFY that a copy hereof has been furnished to DUNCAN A. JONES, Assistant Public Defender, P. O. Drawer 1209, Lake City, FL and to PHYLLIS ROSIER, Assistant State Attorney, P.O. Box 551, Lake City, FL this 4th day of December, 1992.

NAME: Duncan A. Jones
POSITION: Assistant Public Defender

IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT IN AND FOR COLUMBIA COUNTY, FLORIDA.

JASON ONEIL TODD	*	
Defendant, Appellant	*	
-vs-	*	CASE NO. 92-370CF
STATE OF FLORIDA,	*	
Plaintiff, Appellee.	*	

ORDER APPROVING DESIGNATION

THE COURT having considered Appellant's designation to the court reporter, NINI ST. JOHN, and finding that it requires transcription of only so much of the record as will be needed to support the issues to be raised on appeal, the same is hereby approved.

DONE AND ORDERED this 6th day of January, 1993.

/s/
L. ARTHUR LAWRENCE, JR.
Circuit Judge

I HEREBY CERTIFY that a copy hereof has been furnished to PHYLLIS ROSIER, Assistant State Attorney, P. O. Box 551, Lake City, FL, DUNCAN A. JONES, Assistant Public Defender, P. O. Drawer 1209, Lake City, FL, NINI ST. JOHN, Court Reporter, Rt. 12, Box 82, Lake City, FL, ROBERT BUTTERWORTH, Attorney General, The Capitol, Tallahassee, FL 32301 and to JASON ONEIL TODD, c/o DUNCAN A. JONES, Assistant Public Defender, P.O. Drawer 1209, Lake City, FL this 11th day of January, 1993.

NAME: /s/ Pam Sweat

POSITION: Secretary, Public Defender's Office

IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT IN AND FOR COLUMBIA COUNTY, FLORIDA.

JOSEPH HUGH HUTCHINGSON, *

Defendant, Appellant *

-vs- * CASE NO. 92-353CF

STATE OF FLORIDA, *

Plaintiff, Appellee. *

ORDER APPROVING DESIGNATION

THE COURT having considered Appellant's designation to the court reporter and finding that it requires transcription of only so much of the record as will be needed to support the issues to be raised on appeal, the same is hereby approved.

DONE AND ORDERED this 4th day of December, 1992.

/s/
L. ARTHUR LAWRENCE, JR.
Circuit Judge

I HEREBY CERTIFY that a copy hereof has been furnished to PHYLLIS ROSIER, Assistant State Attorney, P. O. Box 551, Lake City, FL, DUNCAN A. JONES, Assistant Public Defender, P. O. Drawer 1209, Lake City, FL, NINI ST. JOHN, Court Reporter, Rt. 12, Box 82, Lake City, FL, ROBERT BUTTERWORTH, Attorney General, The Capitol, Tallahassee, FL 32301 and to JOSEPH HUGH HUTCHINGSON, c/o DUNCAN A. JONES, Assistant Public Defender, P.O. Drawer 1209, Lake City, FL this 30th day of December, 1992.

NAME: /s/ Pamela Sweat
POSITION: Secretary, Public Defender's Office

IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT IN AND FOR COLUMBIA COUNTY, FLORIDA.

JASON ONEIL TODD *

Defendant, Appellant *

-vs- * CASE NO. 92-370CF

STATE OF FLORIDA, *

Plaintiff, Appellee. *

ORDER APPROVING SUPPLEMENTAL DESIGNATION

THE COURT having considered Appellant's designation to the court reporter, ANN LEWIS, and finding that it requires transcription of only so much of the record as will be needed to support the issues to be raised on appeal, the same is hereby approved.

DONE AND ORDERED this 6th day of January, 1993.

/s/
L. ARTHUR LAWRENCE, JR.
Circuit Judge

I HEREBY CERTIFY that a copy hereof has been furnished to PHYLLIS ROSIER, Assistant State Attorney, P. O. Box 551, Lake City, FL, DUNCAN A. JONES, Assistant Public Defender, P. O. Drawer 1209, Lake City, FL, ANN LEWIS, Court Reporter, 102 West Madison Street, Lake City, FL, ROBERT BUTTERWORTH, Attorney General, The Capitol, Tallahassee, FL 32301 and to JASON ONEIL TODD, c/o DUNCAN A. JONES, Assistant Public Defender, P.O. Drawer 1209, Lake City, FL this 11th day of January, 1993.

NAME: /s/ Pam Sweat

POSITION: Secretary, Public Defender's Office

IN THE CIRCUIT COURT, THIRD JUDICIAL CIRCUIT, IN AND FOR COLUMBIA COUNTY, FLORIDA.

CASE NO. 92-370CF

IN RE: Invoice dated 12/28/92, in the amount of $60.00.

_____/

ORDER ON COURT REPORTER COSTS

It appearing that a judgment is required before Columbia County will be considered for reimbursement of expenses aforementioned and heretofore attached, it is, pursuant to Florida Statute 27.54(3) regarding costs taxed by the Court against counties.

ORDERED that Columbia County make payment for the invoice attached and the approval of the undersigned judge authorizing payment of the attached invoice is confirmed.

DONE AND ORDERED this 7th day of January, 1993 in Lake City, Columbia County, Florida.

/s/
Circuit Judge

IN THE CIRCUIT COURT, THIRD JUDICIAL CIRCUIT, IN AND FOR COLUMBIA COUNTY, FLORIDA.

CASE NO. 92-353CF, 92-597CF

IN RE: Invoice dated 12/14/92, in the amount of $60.00. Invoice dated 12/14/92 in the amount of $193.45.

_____/

ORDER ON COURT REPORTER COSTS

It appearing that a judgment is required before Columbia County will be considered for reimbursement of expenses aforementioned and heretofore attached, it is, pursuant to Florida Statute 27.54(3) regarding costs taxed by the Court against counties.

ORDERED that Columbia County make payment for the invoice attached and the approval of the undersigned judge authorizing payment of the attached invoice is confirmed.

DONE AND ORDERED this 23rd day of December, 1992 in Live Oak, Suwannee County, Florida.

/s/
Circuit Judge

DISTRICT COURT OF APPEAL, FIRST DISTRICT

Tallahassee, Florida 32399
Telephone No. (904) 488-6151

December 8, 1992

CASE NO: 92-04116

L.T. CASE NO. 92-370-CF

Jason Todd v. State of Florida

Appellant(s), Appellee(s).

BY ORDER OF THE COURT:

The appellant/petitioner has failed to tender the required $250.00 filing fee per Section 35.22(3), Florida Statutes and Florida Rules of appellate Procedure Rule 9.110(b).

The appellant/petitioner is hereby directed to forthwith forward to this office within 30 days a cashiers check or money order in the amount of $250.00 to cover the filing fee. If appellant/petitioner seeks to proceed with prepayment of costs waived, appellant/petitioner is hereby directed to file a motion and affidavit of indigency with the clerk of the lower tribunal (the court, agency, officer, board, commission or body whose order is to be reviewed) so said clerk may issue a Certification of Indigency pursuant to Section 57.081(1), Florida Statutes (1991). The affidavit of indigency must bear a notarized signature. The failure of appellant/petitioner to submit a Certification of Indigency or the required filing fee within 30 days will result in the dismissal of this cause without further order of the court.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

JON S. WHEELER, CLERK

By: /s/ Vickie Maloy
Deputy Clerk

(SEAL)

Copies:

Wade L. Griffin
Robert A. Butterworth

DISTRICT COURT OF APPEAL, FIRST DISTRICT

Tallahassee, Florida 32399
Telephone No. (904) 488-6151

February 5, 1993

CASE NO: 92-04116

L.T. CASE NO. 92-370-CF

Jason Todd v. State of Florida

Appellant(s), Appellee(s).

BY ORDER OF THE COURT:

The above-styled appeal being one which this Court has determined to accord expedited treatment it is ordered that:

1. Pursuant to Rule 9.600(a), Florida Rules of Appellate Procedure, as amended effective July 1, 1987, The Florida Bar re: Amendments to Florida Rules of Appellate Procedure and Rules of Judicial Administration, 509 So.2d 276 (Fla. 1987), all motions for extension of time must be filed with, and directed to, this court.

2. No motions for extension of time will be granted except in case of extreme emergency. Any such motion, whether filed by a party or a court reporter, shall set forth with particularity the grounds constituting such emergency.

3. Within ten days of this date, counsel for appellant (or appellant if proceeding pro se) shall file with this court a certification substantially as follows indicating the name, address, and telephone number of the court reporter(s), if any, on whom appellant will rely in preparing transcripts of proceedings:

Certification

I hereby certify that the following court reporter has been requested to prepare and file a transcript of proceedings in the above-styled appeal:

(name of court reporter)

(address)

(telephone number)

The designations to the reporter were served on the reporter on (date).

I have provided the court reporter a copy of this order on (date).

-OR-

I hereby certify that no transcript has been or will be requested to be prepared in connection with this appeal.

(signature of counsel of self-represented appellant)

A copy of the certification shall be properly served on opposing counsel and the court reporter.

4. In the event appellee has ordered or intends to order preparation of a transcript from any court reporter not identified in the appellant's certification, appellee shall file a certification as described above within ten days of service of the appellant's certification.

5. Failure to timely comply with the terms of this order may result in the imposition of sanctions possibly including, but not limited to, dismissal of the appeal.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

JON S. WHEELER, CLERK

(SEAL)

By: /s/ Vickie Maloy
Deputy Clerk

Copies:

Wade L. Griffin
John G. Crabtree
P. DeWitt Cason
Duncan A. Jones
Robert A. Butterworth

DISTRICT COURT OF APPEAL, FIRST DISTRICT

Tallahassee, FL 32399-1850
Telephone (904) 488-6151
February 26, 1993

CASE NO. 92-4116 and 92-4136

JASON TODD, et al.
Appellant/Petitioner

vs.

STATE OF FLORIDA
Appellee/Respondent.

BY ORDER OF THE COURT:

Appellants' motions filed February 10, 1993, are granted and the above cases are consolidated for purposes of briefing. Time for service of the initial brief is extended to March 17, 1993.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

JON S. WHEELER, CLERK

(SEAL)

By: /s/ Laurie Black

Copies:
Nancy Daniels
Robert A. Butterworth
John G. Crabtree

DISTRICT COURT OF APPEAL, FIRST DISTRICT

Tallahassee, FL 32399-1850
Telephone (904) 488-6151
March 3, 1993

LT 92-370-CF CASE NO. 92-4116

JASON TODD vs. STATE OF FLORIDA
Appellant/Petitioner Appellee/Respondent.

BY ORDER OF THE COURT:

In view of appellant's response to this court's order giving this case expedited treatment as a "child" case, this court's order dated February 5, 1993, is hereby vacated and this appeal shall not be given further expedited treatment.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

JON S. WHEELER, CLERK

(SEAL)

By: /s/ Laurie Black

Copies:
Nancy Daniels
Robert A. Butterworth
John G. Crabtree
P. DeWitt Cason

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Florida 32399
Telephone No. (904) 488-6151

March 9, 1993

CASE NO. 92-04116

L.T. CASE NO. 92-370-CF

Jason Todd v. State of Florida

Appellant(s), Appellee(s).

BY ORDER OF THE COURT:

Appellant's motion for extension of time to serve initial brief, filed on March 5, 1993, is granted. Time for service of the initial brief is extended to April 16, 1993.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

JON S. WHEELER, CLERK

(SEAL)

By: /s/ Laurie Black
Deputy Clerk

Copies:

Nancy Daniels
Robert A. Butterworth

John G. Crabtree

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Florida 32399
Telephone No. (904) 488-6151

March 9, 1993

CASE NO. 92-04116

L.T. CASE NO. 92-370-CF

Joseph Hugh Hutchingson v. State of Florida

Appellant(s), Appellee(s).

BY ORDER OF THE COURT:

Appellant's motion for extension of time to serve initial brief, filed on March 5, 1993, is granted. Time for service of the initial brief is extended to April 16, 1993.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

JON S. WHEELER, CLERK

(SEAL)

By: /s/ Laurie Black
Deputy Clerk

Copies:

Nancy Daniels
Robert A. Butterworth
John G. Crabtree

DISTRICT COURT OF APPEAL, FIRST DISTRICT

Tallahassee, Florida 32399-1850
Telephone (904) 488-6151

April 21, 1993
CASE NO. 92-04116/92-04136

JASON TODD
Appellant

v.

STATE OF FLORIDA
Appellee

BY ORDER OF THE COURT:

It appears the initial brief filed on April 19, 1993 fails to comply with Florida Rule of Appellate Procedure and/or the Florida Rules of Judicial Administration as indicated below. Appellant is ordered to show cause within 10 days why the brief should not be stricken. In lieu of a response to this order, appellee may serve a complete amended brief (original and 3 copies) within 10 days of this order. Substitute pages will not be accepted to correct the cited deficiencies. The brief should be clearly designated as "amended" initial/answer/reply or cross-reply brief. Failure to respond to this order or serve an amended brief may result in imposition of sanctions, possibly including, but not limited to, dismissal of the case and/or in the case of an unacceptable answer, reply or cross-reply brief, submission of the case to the court without benefit of the brief. Florida Rule of Appellate Procedure 9.410. The time for service of any authorized responsive brief is tolled until service of the amended brief or discharge of this show cause order.

GENERAL PREPARATION AND FORM
(Fla. R. App. P. 9.210(a)).

__ insufficient margins
__ inappropriate single spacing
__ more than 27 printed lines per page
X inappropriate type face or characters per inch
__ no heading
__ no cover sheet

cover sheet lacking:
__ party on whose behalf brief is filed
__ name/address of

__ brief exceeds 50 pages
__ no heading
__ reply or cross-reply brief exceed 15 pages
__ unauthorized paper used (onionskin or nonwhite)
__ brief not securely bound
__ wrong size paper used
__ no table of contents
__ table of contents does not list issues for review
__ no statement of the case
__ no statement of the facts
__ no summary of argument
__ summary of argument exceeds five pages

attorney filing
X lower tribunal

table of citations:
__ not included
__ does not list cases alphabetically
__ does not show page numbers on which citations appear
__ no conclusion
__ conclusion exceeds one page

SUBSTANCE OF BRIEF (Fla. R. App. P. 9.210(b)):

__ record references lacking or insufficient
__ summary of argument merely repetition of argument headings
__ conclusion fails to set forth precise relief sought
__ answer brief is not responsive to initial brief
__ fails to state precise issues presented for review

OTHER

__ failure to file original and three copies of brief
__ recycled paper not used (Fla.R.Jud.Admin. 2.055)
__ brief not signed by counsel or pro se party (Fla.R.Jud.Admin. 2.060(d))
__ copied material (appendix, etc.) illegible
__ no certificate of service (Fla.R.App.P. 9.420)

__ other (as specified):

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

Jon S. Wheeler, Clerk

(SEAL)

By: /s/ Laurie Black
Deputy Clerk

Copies:
Nancy Daniels
Robert A. Butterworth
John G. Crabtree

DISTRICT COURT OF APPEAL, FIRST DISTRICT

Tallahassee, Florida 32399
Telephone No. (904) 488-6151

May 20, 1993

CASE NO: 92-04116/92-04136

L.T. CASE NO. 92-370-CF

Jason Todd v. State of Florida

Appellant(s), Appellee(s).

BY ORDER OF THE COURT:

Upon review of the recently filed amended brief/response by the appellant in this case, the court sua sponte discharges its order of April 21, 1993 requiring appellant to file an amended brief or to show cause why the sanctions should not be imposed.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

JON S. WHEELER, CLERK

(SEAL)

By: /s/ Laurie Black
Deputy Clerk

Copies:
Nancy Daniels
Robert A. Butterworth
John G. Crabtree

DISTRICT COURT OF APPEAL, FIRST DISTRICT

Tallahassee, Florida 32399
Telephone No. (904) 488-6151

June 4, 1993

CASE NO: 92-04116

L.T. CASE NO. 92-370-CF

Jason Todd v. State of Florida

Appellant(s), Appellee(s).

BY ORDER OF THE COURT:

Appellee's motion for extension of time to serve answer brief, filed on May 27, 1993, is granted. Time for service of the answer brief is extended to June 28, 1993.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

JON S. WHEELER, CLERK

(SEAL)

By: /s/ Laurie Black
Deputy Clerk

Copies:
Nancy Daniels
Michael J. Neimand
John G. Crabtree

DISTRICT COURT OF APPEAL, FIRST DISTRICT

Tallahassee, Florida 32399
Telephone No. (904) 488-6151

June 4, 1993

CASE NO: 92-04116/92-04136

L.T. CASE NO. 92-370-CF

Jason Todd v. State of Florida

Appellant(s), Appellee(s).

CORRECTED

BY ORDER OF THE COURT:

Appellee's motion for extension of time to serve answer brief, filed on May 27, 1993, is granted. Time for service of the answer brief is extended to June 28, 1993.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

JON S. WHEELER, CLERK

(SEAL)

By: /s/ Laurie Black
Deputy Clerk

Copies:
Nancy Daniels
Michael J. Neimand
John G. Crabtree

DISTRICT COURT OF APPEAL, FIRST DISTRICT

Tallahassee, Florida 32399
Telephone No. (904) 488-6151

July 2, 1993

CASE NO: 92-04116/92-04136

L.T. CASE NO. 92-370-CF

Jason Todd v. State of Florida

Appellant(s), Appellee(s).

BY ORDER OF THE COURT:

Appellee's motion for extension of time to serve answer brief, filed on June 30, 1993, is granted. Time for service of the answer brief is extended to July 28, 1993. No further extensions will be granted to movant except in case of emergency.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

JON S. WHEELER, CLERK

By: /s/ Laurie Black (SEAL)
Deputy Clerk

Copies:

Nancy Daniels
Michael J. Neimand
John G. Crabtree

DISTRICT COURT OF APPEAL, FIRST DISTRICT

Tallahassee, Florida 32399
Telephone No. (904) 488-6151

August 11, 1993

CASE NO: 92-04116/92-04136

Jason Todd v. State of Florida

Appellant(s), Appellee(s).

BY ORDER OF THE COURT:

It appears the answer brief filed on July 26, 1993 fails to comply with Florida Rules of Appellate Procedure and/or the Florida Rules of Judicial Administration as indicated below. Appellee is ordered to show cause within 10 days why the brief should not be stricken. In lieu of a response to this order, appellee may serve a complete amended brief (original and 3 copies) within 10 days of this order. Substitute pages will not be accepted to correct the cited deficiencies. The brief should be clearly designated as "amended" initial/answer/reply or cross-reply brief. Failure to respond to this order or serve an amended brief may result in imposition of sanctions, possibly including, but not limited to, dismissal of the case and/or in the case of an unacceptable answer, reply or cross-reply brief, submission of the case to the court without benefit of the brief. Florida Rule of Appellate Procedure 9.410. The time for service of any authorized responsive brief is tolled until service of the amended brief or discharge of this show cause order.

GENERAL PREPARATION AND FORM
(Fla. R. App. P. 9.210(a)).

__ insufficient margins
__ inappropriate single spacing
__ more than 27 printed lines per page
__ no cover sheet

cover sheet lacking:
__ party on whose

__ inappropriate type face or characters per inch
__ no heading
__ brief exceeds 50 pages
__ no heading
__ reply or cross-reply brief exceed 15 pages
__ unauthorized paper used (onionskin or nonwhite)
__ brief not securely bound
__ wrong size paper used
__ no table of contents
__ table of contents does not list issues for review
__ no statement of the case
__ no statement of the facts
__ no summary of argument
__ summary of argument exceeds five pages

behalf brief is filed
__ name/address of attorney filing
__ lower tribunal

table of citations:
__ not included
__ does not list cases alphabetically
__ does not show page numbers on which citations appear
X no conclusion
__ conclusion exceeds one page

SUBSTANCE OF BRIEF (Fla. R. App. P. 9.210(b)):

__ record references lacking or insufficient
__ summary of argument merely repetition of argument headings
__ conclusion fails to set forth precise relief sought
__ answer brief is not responsive to initial brief
__ fails to state precise issues presented for review

OTHER

__ failure to file original and three copies of brief
__ recycled paper not used (Fla.R.Jud.Admin. 2.055)
X brief not signed by counsel
__ copied material (appendix, etc.) illegible
X no certificate of service (Fla.R.App.P. 9.420)

or pro se party
(Fla.R.Jud.Admin. 2.060(d))

__ other (as specified):

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

Jon S. Wheeler, Clerk

(SEAL)

By: /s/ Laurie Black
Deputy Clerk

Copies:
Nancy Daniels
Michael J. Neimand
John G. Crabtree

DISTRICT COURT OF APPEAL, FIRST DISTRICT

Tallahassee, Florida 32399
Telephone No. (904) 488-6151

August 18, 1993

CASE NO: 92-04116

L.T. CASE NO. 92-370-CF

Jason Todd v. State of Florida

Appellant(s), Appellee(s).

BY ORDER OF THE COURT:

Motion to enlarge page limits, filed August 17, 1993, is denied without prejudice to refile the motion along with the original and three copies of the proposed reply brief. Bennett v. Florida National Bank, 517 So.2d 97 (Fla. 1st DCA 1987).

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

JON S. WHEELER, CLERK

(SEAL)

By: /s/ Laurie Black
Deputy Clerk

Copies:

Nancy Daniels
Michael J. Neimand

John G. Crabtree

DISTRICT COURT OF APPEAL, FIRST DISTRICT

Tallahassee, Florida 32399
Telephone No. (904) 488-6151

August 18, 1993

CASE NO: 92-04136

L.T. CASE NO. 92-370-CF

Joseph Hugh Hutchingson v. State of Florida

Appellant(s), Appellee(s).

BY ORDER OF THE COURT:

Motion to enlarge page limits, filed August 17, 1993, is denied without prejudice to refile the motion along with the original and three copies of the proposed reply brief. Bennett v. Florida National Bank, 517 So.2d 97 (Fla. 1st DCA 1987).

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

JON S. WHEELER, CLERK

(SEAL)

By: /s/ Laurie Black
Deputy Clerk

Copies:

Nancy Daniels
Michael J. Neimand

John G. Crabtree

DISTRICT COURT OF APPEAL, FIRST DISTRICT

Tallahassee, Florida 32399
Telephone No. (904) 488-6151

August 26, 1993

CASE NO: 92-04116/92-04136

L.T. CASE NO. 92-370-CF

Jason Todd v. State of Florida

Appellant(s), Appellee(s).

BY ORDER OF THE COURT:

Upon Review of the recently filed amended brief/response by the Appellee in this case, the court sua sponte discharges its order of August 11, 1993 requiring appellee to file an amended brief or to show cause why the sanctions should not be imposed.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

JON S. WHEELER, CLERK

(SEAL)

By: /s/ Vickie Maloy
Deputy Clerk

Copies:
Nancy Daniels
Michael J. Neimand
John G. Crabtree

DISTRICT COURT OF APPEAL, FIRST DISTRICT

Tallahassee, Florida 32399
Telephone No. (904) 488-6151

DATE August 30, 1993

CASE NO: 92-4136 & 92-4116 (consolidated)

L.T. CASE NO. 92-370-CF

JASON TODD, et al.	v.	STATE OF FLORIDA
appellant/petitioner,		appellee/respondent

BY ORDER OF THE COURT:

The motion of the American Jewish Congress, et al. for leave to appear as amici curiae before this court aligned with the appellees is granted.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

Jon S. Wheeler, Clerk

By: /s/ Laurie Black (SEAL)
Deputy Clerk

Copies:

Nancy Daniels
Michael J. Neimand
Marc D. Stern
Thomas A. Horkan, Jr.
John G. Crabtree
Mitchell Horwich
Lois C. Waldman

DISTRICT COURT OF APPEAL, FIRST DISTRICT

Tallahassee, Florida 32399
Telephone No. (904) 488-6151

September 14, 1993

CASE NO: 92-04116

L.T. CASE NO. 92-370-CF

Jason Todd v. State of Florida

Appellant(s), Appellee(s).

BY ORDER OF THE COURT:

Appellant's motion for extension of time to serve reply brief, filed on September 3, 1993, is granted. Time for service of the reply brief is extended to October 11, 1993.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

JON S. WHEELER, CLERK

By: /s/ Laurie Black (SEAL)
Deputy Clerk

Copies:

Nancy Daniels
Michael J. Neimand
Marc Stern
Thomas A. Horkan, Jr.
John G. Crabtree
Mitchell Horwich
Lois C. Waldman

DISTRICT COURT OF APPEAL, FIRST DISTRICT

Tallahassee, Florida 32399
Telephone No. (904) 488-6151

September 14, 1993

CASE NO: 92-04136

L.T. CASE NO. 92-370-CF

Joseph Hugh Hutchingson v. State of Florida

Appellant(s), Appellee(s).

BY ORDER OF THE COURT:

Appellant's motion for extension of time to serve reply brief, filed on September 3, 1993, is granted. Time for service of the reply brief is extended to October 11, 1993.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

JON S. WHEELER, CLERK

By: /s/ Laurie Black (SEAL)
Deputy Clerk

Copies:

Nancy Daniels
Michael J. Neimand
Marc Stern
Thomas A. Horkan, Jr.
John G. Crabtree
Mitchell Horwich
Lois C. Waldman

DISTRICT COURT OF APPEAL

Tallahassee, Florida 32399
Telephone No. (904) 488-6151

October 22, 1993

CASE NO. 92-04116

L.T. CASE NO. 92-370-CF

Jason Todd	v.	State of Florida
Appellant(s),		Appellee(s).

BY ORDER OF THE COURT:

Appellant's motion for extension of time to serve reply brief, filed on October 8, 1993, is granted. Time for service of the reply brief is extended to November 10, 1993. No further extensions will be granted to movant except in case of emergency.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

JON S. WHEELER, CLERK

(SEAL)

By: /s/ Karen Roberts
Deputy Clerk

Copies:
Nancy Daniels
Michael J. Neimand
Marc Stern
Thomas A. Horkan, Jr.
John G. Crabtree
Mitchell Horwich
Lois C. Waldman

DISTRICT COURT OF APPEAL, FIRST DISTRICT

Tallahassee, Florida 32399-1850

Telephone (904) 488-6151

DATE: April 26, 1994

CASE NO.: 92-4116/92-4136

JASON TODD & JOSEPH HUGH HUTCHINGSON	vs. STATE OF FLORIDA
Appellants/Petitioners	Appellee/Respondent

BY ORDER OF THE COURT:

The above cases, previously consolidated for purposes of briefing, are simsilarly consolidated for the purpose of oral argument. Oral argument is granted and each party is permitted a total of 15 minutes per side as to both of the consolidated cases. Oral argument is set for June 2, 1994, at 9:00 A.M. at the First District Court of Appeal, 300 Martin Luther King, Jr. Boulevard, Tallahassee, Florida, 32399-1850.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

JON S. WHEELER, CLERK

(SEAL)

By: /s/ Sondra Joyner
Deputy Clerk

Copies: Nancy Daniels
John G. Crabtree
Michael J. Neimand
Mitchell Horwich
Marc Stern
Lois C. Waldman
Thomas A. Horkan, Jr.

Supreme Court of Florida

WEDNESDAY, JANUARY 18, 1995

JASON TODD,	*	
	*	
Petitioner,	*	
	*	
v.	*	CASE NO. 84,512
	*	
STATE OF FLORIDA,	*	District Court of Appeal,
	*	1st District - No. 92-4136
Respondent.	*	
	*	

* * * * * * * * * * * * * * * * * *

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution (1980), and the court having determined that it should decline to accept jurisdiction, it is ordered that the Petition for Review is denied.

No Motion for Rehearing will be entertained by the court. See Fla. R. App. P. 9.330(d).

OVERTON, SHAW, HARDING, WELLS and ANSTEAD, JJ., concur

A True Copy

TEST:

(SEAL)

Sid J. White
Clerk, Supreme Court

BHP
cc: Hon. Jon S. Wheeler, Clerk
Hon. P. Dewitt Cason, Clerk
Hon. L. Arthur Lawrence, Judge

P. Daniel Brinkmeyer, Atty.
Nancy Daniels, Atty.
John G. Crabtree, Atty.
Michael J. Neimand, Atty.
James W. Rogers, Atty.
Marc D. Stern, Atty.

Lois Waldman, Atty.
Thomas A. Horkan, Jr., Atty.
Mitchell Horwich, Atty.

Supreme Court of Florida

FRIDAY, FEBRUARY 10, 1995

JOSEPH HUGH HUTCHISON,	*	
	*	
Petitioner,	*	
	*	
v.	*	CASE NO. 84,347
	*	
STATE OF FLORIDA,	*	District Court of Appeal,
	*	1st District - No. 92-4136
Respondent.	*	
	*	
* * * * * * * * * * * * * * * * *		

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution (1980), and the court having determined that it should decline to accept jurisdiction, it is ordered that the Petition for Review is denied.

No Motion for Rehearing will be entertained by the court. See Fla. R. App. P. 9.330(d).

GRIMES, C.J., OVERTON, KOGAN, HARDING and WELLS, JJ., concur
SHAW and ANSTEAD, JJ., dissent

A True Copy

TEST:

(SEAL)

Sid J. White
Clerk, Supreme Court

BHP
cc: Hon. Jon S. Wheeler, Clerk
Hon. P. Dewitt Cason, Clerk
Hon. L. Arthur Lawrence, Judge

Mr. John G. Crabtree
Mr. Michael J. Neimand
Mr. P. Douglas Brinkmeyer

Mr. Lois Waldman
Mr. Marc D. Stern
Mr. Thomas A. Horkin, Jr.
Mr. Mitchell Horwich

DISTRICT COURT OF APPEAL, FIRST DISTRICT

Tallahassee, Florida 32399
Telephone No. (904) 488-6151

October 11, 1994

CASE NO: 92-04116

L.T. CASE NO. 92-370-CF

Jason Todd v. State of Florida

Appellant(s), Appellee(s).

BY ORDER OF THE COURT:

Motion for rehearing, filed September 6, 1994, is DENIED.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

JON S. WHEELER, CLERK

By: /s/ Sondra Joyner
(SEAL)
Deputy Clerk

Copies:

Nancy Daniels
Michael J. Neimand
Marc Stern
Thomas A. Horkan, Jr.
John G. Crabtree
Mitchell Horwich
Lois C. Waldman
James W. Rogers

Chapter 38, Section 1005-5-3.2(a) of the 1989 Illinois Statutes provided:

(a) The following factors shall be accorded weight in favor of imposing a term of imprisonment or may be considered by the court as reasons to impose a more severe sentence under Section 5-8-1.

(1) the defendant's conduct caused or threatened serious harm;

(2) the defendant received compensation for committing the offense;

(3) the defendant has a history of prior delinquency or criminal activity;

(4) the defendant, by the duties of his office or by his position, was obligated to prevent the particular offense committed or to bring the offenders committing it to justice;

(5) the defendant held public office at the time of the offense, and the offense related to the conduct of that office;

(6) the defendant utilized his professional reputation or position in the community to commit the offense, or to afford him an easier means of committing it;

(7) the sentence is necessary to deter others from committing the same crime;

(8) the defendant committed the offense against a person who is physically handicapped;

(10) the offense took place in a place of worship or on the grounds of a place of worship, immediately prior to, during or immediately following worship services. For purposes of this subparagraph, "place of worship" shall mean any church, synagogue or other building, structure or place used primarily for religious worship;

(11) the defendant was convicted of a felony committed while he was released on bail or his own recognizance pending trial for a prior felony and was convicted of such prior felony, or the defendant was convicted of a felony committed while he was serving a period of probation or conditional discharge for a prior felony;

(12) the defendant committed or attempted to commit a felony while he was wearing a bulletproof vest. For the purposes of this paragraph (12), a bulletproof vest is any device which is designed for the purpose of protecting the wearer from bullets, shot

or other lethal projectiles;

(13) the defendant held a position of trust or supervision such as, but not limited to, teacher, scout leader, baby sitter, or day care worker, in relation to a victim under 18 years of age, and the defendant committed an offense in violation of Section 11-6, 11-11, 11-15.1, 11-19.1, 11-19.2, 11-20.1, 12-13, 12-14, 12-15 or 12-16 of the Criminal Code of 1961 against the victim.

Bill Analysis
FLORIDA HOUSE OF REPRESENTATIVES

STAFF SUMMARY AND ANALYSIS

CS for HB 235 and 351 by Committee on Criminal Justice, Elaine Gordon and L.J. Smith relating to criminal mischief

DATE: January 20, 1982
REVISED: January 20, 1982
REVISED:

Other Committee of Reference:
None

SENATE BILL:

I. SUMMARY

A. PRESENT SITUATION:

Section 806.13, Florida Statutes, defines "criminal mischief" as an offense where the perpetrator willfully and maliciously injures or damages any real or personal property of another.

This section further provides that if the damage done is $200 or less, the crime is a second degree misdemeanor punishable by a definite term of imprisonment not to exceed 60 days and a fine of $500. If the damage done exceed $200 but does not exceed $1,000, the crime is a first degree misdemeanor punishable by a definite term of imprisonment not to exceed one year and a fine of $1,000. If the damage done exceeds $1,000 or if the operation of a business is interrupted or impaired, the crime is a third degree felony, punishable by a term of imprisonment not to exceed 5 years and a fine of $5,000.

B. EFFECT OF PROPOSED CHANGES:

This bill would create a new section which provides that any person who "defaces, tampers with, or commits an act of criminal mischief" to a church, synagogue, mosque or other place of worship or other real property used for religious purposes, or to any religious

article contained therein will be guilty of a third degree felony punishable by a term of imprisonment not to exceed 5 years and a fine of $5,000. This bill omits the criminal classifications based on the value of damage done (which are enumerated in §806.13) if the mischief is committed in a place of worship.

This bill also provides that if in the perpetration of criminal mischief upon a place of worship, bodily injury results to another, the perpetrator shall be guilty of a second degree felony punishable by a term of imprisonment not to exceed 15 years and a fine of $10,000. This bill expressly specifies that real property shall include but not be limited to places used or intended to be used for the permanent interment of human remains.

II. FISCAL IMPACT

The Department of Corrections has no present data that distinguishes criminal mischief in a place of worship from other acts of criminal mischief. As such there is no definitive method which could predict, with any preciseness, the fiscal impact of this bill. The Department of Corrections, however, concedes that the fiscal impact of this bill will likely be minimal.

III. COMMENTS

It is believed that legislation of this type is necessary to curtail the increasing number of criminal mischief acts committed in a place [sic] of worship and in cemeteries.

IV. AMENDMENTS

Prepared by: /s/
Edward G. Sullivan

Staff Director: /s/
Thomas R. Tedcastle

Copy to Sponsor: January 20, 1982